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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 2956 OF 2026
IN
COMMERCIAL SUIT NO. 39 OF 2015

DNM Trustee Services Private Limited ...*Applicant*

In the matters between:

DNM Trustee Services Private Limited ... *Plaintiff*

: *Versus* :

Victoria Enterprises Limited & Ors. ... *Defendants*

Mr. Viraj Parikh with Mr. Parag Kabadi, Ms. Anshita Sethi and Mr. Vishal Tiwari i/b. DSK Legal, for the Plaintiff.

Mr. Manish N. Jain i/b. S.M. Jain Associates for Defendant No.1.

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 6 OCTOBER 2026.

JUDGMENT PRON. ON : 23 OCTOBER 2026.

ORDER :

1) This is an Application filed by the Plaintiff under Order XIII-A of the Code of Civil Procedure, 1908 (**Code**) seeking summary judgment in terms of prayer clause (b)(ii) of the Plaint (*for completing the*

construction of all common amenities/facilities in the building) and prayer clause (d-2) of the Plaint for *(grant of interest @ 12% p.a. on consideration of Rs.5,51,00,000/- from the date of promised possession of the units i.e. 31 March 2008 till the date of actual handing over of possession of 15 February 2020).*

2) By a registered Agreement for Sale dated 2 February 2008, Defendant No.1 agreed to sell Unit Nos.503 and 504 in the building 'Pittie Chamber' near Bandra-Kurla Complex, Mumbai to Defendant Nos.3 and 4. The entire agreed consideration of Rs.5,51,00,000/- has been paid. Plaintiff is the trustee of Lalwani Family Trust, settled by registered instrument for the benefit of Lalwani Family, including Defendant Nos.3 and 4. Since possession of flat was not handed over in term of the Agreement for Sale, Plaintiff has filed the present suit seeking *inter-alia* specific performance of the Agreement for Sale and compensation for delay. After filing of the suit, possession of Units has been handed over to the Plaintiff on 15 February 2020.

3) The Plaintiff has filed the present Interim Application seeking summary judgment under Order XIII-A of the Code. The prayers in the Interim Application read thus:

(a) this Hon'ble Court be pleased to grant a summary judgment in terms of prayer clause (b)(ii) of the Plaint and declare and decree that the Defendant No.1 is bound to specifically perform its part of the Agreement for Sale dated 2nd February 2008 (Exhibit "" to the Plaint) by completing the construction of all the common amenities / facilities including inter alia provision of separate electricity meter, providing properly maintained and manned lifts, providing properly maintained and manned reception;

(b) this Hon'ble Court may be pleased to grant an summary judgment in terms of prayer clause (d-2) of the Suit and grant the Plaintiff interest at the rate of 12% p.a. on the consideration of Rs.5,51,00,000/- (Rupees Five Crore Fifty One Lakh Only) paid to Defendant No.1 under the Agreement for Sale from the date of promised possession of the Units (31st March 2008) till the date of actual handover of possession (15 February 2020) being a sum Rs.7,93,44,000/- (Rupees Seven Crore Ninety Three Lakh Forty Four Only) and further amount of Rs.2,94,73,216/- (Rupee Two Crore Ninety Four Lakh Seventy Three Thousand Two Hundred and Sixteen Only) being interest at the rate of 12% p.a. from 15th February 2020 to 30th July 2024 ie. the date of handover of the parking slots and further interest at the rate of 12% p.a. on the on the consideration of Rs.5,51,00,000/- (Rupees Five Crore Fifty One Lakh Only) until completion of construction of the common amenities;

(c) for costs; and

(d) for such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

4) Defendant No.1 has filed Affidavit-in-reply opposing the Interim Application raising various defences. Since pleadings in the Interim Application are complete, the same is taken up for decision.

5) Mr. Parikh, the learned counsel appearing for the Applicant/Plaintiff submits that Defendant No.1 has handed over possession of the Units after delay of 12 years and that therefore Plaintiff is entitled to interest for the period of delay both in terms of stipulation in the Agreement for Sale, as well as under the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (**RERA**). That RERA is retroactive and covers every ongoing project without a completion certificate and since the project in question was ongoing on account of issuance of part Occupancy Certificate in July 2019, provisions

of RERA are applicable to the present case. That the liability to pay interest is not a penalty or punishment but it is a mere normal accretion on the capital as held in **Alok Shanker Pandey Versus. Union of India and others**¹. That there is statutory liability to pay interest under Section 18(1) of RERA as held by the Apex Court in **Newtech Promoters & Developers (P.) Ltd. Versus. State of Uttar Pradesh and others**². That mere non-registration of the project under RERA is irrelevant and Defendant No.1 cannot benefit from its own wrong. That failure to register the project is itself in contravention to RERA as held by this Court in **Mohammed Zain Khan Versus. Emnroy Properties India & Ors.**³.

6) Mr. Parikh further submits that Plaintiff's prayer for interest @ 12% p.a. is fair as held in ***Alok Shanker Pandey***. Alternatively, RERA's rate of interest in Maharashtra, being SBI's highest Marginal Cost of Lending Rate plus 2% as per the provisions of RERA Rules, 2017, can also be granted. In any case, Clause 8 of the Agreement provides for 9% interest. Mr. Parikh further submits that Defendant No.1 has raised baseless plea of Plaintiff's lack of locus to file the suit. That there has been a registered deed of partition between Defendant Nos.3 and 4, by which the Units are given to their mother-Ms. Jamna S. Lalwani and by registered Deed of Discretionary Trust dated 24 March 2014, the Mother has transferred the Units to the Plaintiff as trustee. That beneficiaries of the Trust are members of the Lalwani family, including the purchasers. In any event, the definition of the term "allottee" under Section 2(d) of

1 (2007) 3 SCC 545

2 (2021) 18 SCC 1

3 2024 : BHC-AS-:18707

RERA includes a person who subsequently acquires an allotment. Further, by handing over possession of the Units to the Plaintiff, the Petitioner has accepted its obligations under the Agreement towards the Plaintiff.

7) Mr. Parikh further submits that Defendant's excuse of *force majeure* events is baseless and not supported by any documentary evidence on record. That in any case, right to claim interest arises regardless of unforeseen events and the same is absolute and unqualified as held by this Court in **Sanklecha Constructions Pvt. Ltd. and others Versus. Nitin Madhukar Shewale and others**⁴.

8) Mr. Parikh concludes by submitting that Defendant No.1 has no real prospect of defending the claim of the Plaintiff. He accordingly prays for making the Interim Application absolute in terms of the prayers made therein.

9) Mr. Jain, the learned counsel appearing for Defendant No.1 opposes the Interim Application submitting that the prayers sought in the Interim Application requires adjudication based on '*evidentiary trial*'. That Defendant No.1 has several valid defences in respect of the prayers b(ii) and (d-2) in the Plaint. That therefore Plaintiff is not entitled to summary judgment. He submits that Plaintiff actually does not have locus to maintain the present suit as there is no contractual relationship between the Plaintiff and Defendant No.1. That therefore Defendant

4 2026 : BHC-AS: 39337

No.1 is not liable to pay any amount towards interest to the Plaintiff. He submits that in any case possession of the units is already handed over and therefore the liability to pay interest and to perform other obligations under the contract can await trial of the suit. He submits that Defendant No.1 was prevented from completing the Project within time on account of factors beyond its control. That the *force majeure* clause is clearly applicable in the facts and circumstances of the present case. That the rejection of the proposal on several occasions by the MCGM was beyond the control of Defendant No. 1. Unless a finding of fact is recorded that Defendant No. 1 is responsible for the delay, Plaintiff's entitlement to claim interest cannot be said to have crystallised. He submits that since there are valid defences to defend the claim of the Plaintiff, provisions of Order XIII-A are inapplicable in the facts and circumstances of the present case.

10) Mr. Jain further submits that under Clause-h of the Partition Deed dated 15 February 2013, it has been falsely stated that the Units were in use, occupation and possession of the respective parties. That provisions of Section 18 of RERA are applicable only to the allottee and that therefore Plaintiff cannot seek benefit of the same. That Section 79 of RERA bars the jurisdiction of Civil Court. That there is no cause of action for seeking specific performance since possession of the units have already been handed over including the car parking spaces and common amenities. He prays for rejection of the Interim Application.

11) Rival contentions urged on behalf of the parties now fall for my consideration.

12) Plaintiff has filed the present suit for specific performance of the Agreement for Sale dated 2 February 2008 by which Defendant No.1 agreed to sell to Defendant Nos.3 and 4, Unit Nos. 503 and 504 in the building 'Pittie Chambers' and the entire agreed consideration of Rs.5,51,00,000/- was paid. Under Clause-8 of the Agreement for Sale, Defendant No.1 had agreed to handover possession of the Units by 31 March 2008. Clause-8 of the Agreement however provided for reasonable extension of time for delivery of possession of units if the completion of the building got delayed on account of events enumerated therein. Clause-8 of the Agreement for Sale stipulated thus:

8. The possession of the said premises shall be delivered to the purchaser/s after the said premises is ready for use and occupation provided all the amounts due and payable by the Purchaser/s under the Agreement and the Stamp Duty and Registration Charges in respect of the said premises are duly paid by the purchaser/s. The owner shall give possession of the said premises to the purchaser/s on or before 31 March 2008. If the owners fail or neglect to give possession of the said premises to the purchaser/s on the above referred date or within any further date or dates as may be mutually agreed between the parties hereto, then in such case the Purchaser/s shall be entitled to give notice to the Owners terminating this agreement, in which event the Owners shall within three months from the receipt of such notice, refund to the Purchaser/s the amount of deposit or earnest money and the further amounts, if any, that may have been received by the Owners from the Purchaser/s as installments in part payment in respect of the said premises along with the simple interest at the rate of 9% per annum from the date of receipt till repayment. The Owners shall also pay liquidated damages of Rs.1,00,000/- (Rupees One lac only) in respect of such termination and neither party shall have any claim against the other in respect of the said premises or arising out of this agreement and the Owners shall be at liberty to dispose off the said premises to any other person or persons at such price and upon such terms and

conditions as the Owners in their absolute discretion think fit and proper.

13) It appears that completion of construction of the building by Defendant No.1 took a long time and part Occupancy Certificate in respect of the building was issued only on 24 July 2019. After filing of the present Suit, Defendant No.1 has handed over possession of the Units to the Plaintiff on 15 February 2020 after making a statement to that effect before this Court on 10 February 2020.

14) Thus, there is delay of 11 years, 10 months and 15 days in handing over possession of the Units to the Plaintiff. Defendant No.1 does not really deny the factum of delay in handing over possession as there are averments in the Written Statement and additional Written Statement about admission on the aspect of delay in completion of construction of the building.

15) Plaintiff has filed the present Application seeking summary judgment under the provisions of Order XIII-A of the Code, which applies to a suit in respect of a commercial dispute of a specified value. Under Order XIII-A of the Code, it is permissible for a Commercial Court to decide the claim pertaining to any commercial dispute without recording oral evidence. Such decision can be in respect of whole claim or even in respect of part of a claim. An application for summary judgment can be made at any time after summons is served on the Defendant, but before framing of the issues. The Court may grant summary judgment against a Defendant if it considers that the

Defendant has no real prospect of successfully defending the claim and that there is no other compelling reason why the claim should not be disposed of without recording oral evidence. Provisions of Order XIII-A of the Code read thus:

ORDER XXX-A

1. Scope of and classes of suits to which this Order applies. —

- (1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.
- (2) For the purposes of this Order, the word “claim” shall include— (a) part of a claim;
(b) any particular question on which the claim (whether in whole or in part) depends; or
(c) a counterclaim, as the case may be.
- (3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment.—

An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment.—

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

- (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
- (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure.—

- (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—

- (a) the application must contain a statement that it is an application for summary judgment made under this Order;

- (b) the application must precisely disclose all material facts and identify the point of law, if any;
- (c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—
 - (i) include such documentary evidence in its application, and
 - (ii) identify the relevant content of such documentary evidence on which the applicant relies;
- (d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;
- (e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—

- (a) the date fixed for the hearing; and
- (b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—

- (a) the reply must precisely—
 - (i) disclose all material facts;
 - (ii) identify the point of law, if any; and
 - (iii) state the reasons why the relief sought by the applicant should not be granted;
- (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—
 - (i) include such documentary evidence in its reply; and
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies;
- (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;
- (d) the reply must concisely state the issues that should be framed for trial;
- (e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and
- (f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment.—

(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—

- (a) file such documentary evidence; and
- (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—

- (a) file such documentary evidence in reply; and
- (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—

- (a) filed if such documentary evidence has already been filed; or
- (b) served on a party on whom it has already been served.

6. Orders that may be made by Court.—

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—

- (a) judgment on the claim;
- (b) conditional order in accordance with Rule 7 mentioned hereunder;
- (c) dismissing the application;
- (d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;
- (e) striking out the pleadings (whether in whole or in part); or
- (f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1)

- (a) to (f), the Court shall record its reasons for making such order.

7. Conditional order.—

(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:—

- (a) make it subject to all or any of the following conditions:—
 - (i) require a party to deposit a sum of money in the Court;
 - (ii) require a party to take a specified step in relation to the claim or defence, as the case may be;
 - (iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and
(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs.—

The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.

16) Plaintiff has accordingly sought summary judgment in respect of part of the claim after service of summons on the Defendants but before framing of the issues. The summary judgment is sought only in terms of prayer clause b(ii) and (d-2) of the Plaint. Prayer clauses b(ii) and (d-2) of the plaint read thus:

b(ii). by completing the construction of all the common amenities / facilities including inter alia provision of separate electricity meter, providing properly maintained and manned lifts, providing properly maintained and manned reception.

d-2. In the alternative to prayers (d) and (d-1) hereinabove, this Hon'ble Court may be pleased to grant the Plaintiff interest @12% p.a. on the consideration of Rs. 5,51,00,000/- paid to Defendant No. 1 under the Agreement for Sale from the date of promised possession of the Units (31 March 2008) till the date of actual handover of possession (15th February 2020) being a sum Rs. 7,93,44,000/- and further interest @ 12% p.a. till such time as the Defendant No. 1 hands over the car parking slots and completes construction of the common amenities.

17) So far as the prayer in Clause b(ii) of the plaint is concerned, the same seeks specific performance of the Agreement for Sale by completing the construction of all common amenities/facilities, provision of separate electricity meter, provision of properly maintained and manned lifts, provision of properly maintained and manned

reception. In my view, this prayer would require evidentiary trial and leading of oral evidence as the same involves factual enquiry. What is the extent of non-construction of common amenities/facilities cannot be known without leading of evidence. Plaintiff will have to prove by leading oral evidence if a particular amenity/facility is not constructed. In my view therefore, prayer clause b(ii) cannot be decided in absence of oral evidence. Therefore, prayer for summary judgment in terms of prayer b(ii) cannot be granted at this stage.

18) So far as the prayer for summary judgment in terms of prayer clause (d-2) of the plaint is concerned, Plaintiff seeks interest @ 12% p.a. on consideration of Rs.5,51,00,000/- paid by it to Defendant No.1 under the Agreement for Sale from the promised date of possession of Units (31 March 2008) till the date of actual handing over of possession of the Units (15 February 2020).

19) Defendant No.1 has sought to raise essentially two defences for opposing grant of summary judgment in terms of prayer clause (d-2) of the plaint. Firstly, it is sought to be contended that Plaintiff has no locus to maintain the suit since there is no contractual relationship between the Plaintiff and Defendant No.1. Secondly, it is sought to be urged that Defendant No.1 was prevented from completing construction of the building and handing over possession of the Units to the Plaintiff within the agreed timeline on account of occurrence of *force majeure* events.

20) As observed above, summary judgment can be granted by a Court against a Defendant if it reaches a satisfaction that the Defendant has no real prospect of successfully defending the claim and that there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. Thus, both the conditions of Rule 3 of Order XIII-A need to be satisfied for grant of summary judgment in favour of the Plaintiff.

21) In the recent judgment of the Apex Court in **Reliance Eminent Trading & Commercial Pvt. Ltd. Versus. Delhi Development Authority**⁵ the Apex Court has discussed the entire scheme of Order XIII-A and has held in paragraph 50 of the judgment as under:

50. Coming back to the Order necessary for adjudication of the present case, Rule 3 of Order XIII-A of the CPC provides that the Court, while adjudicating an application for summary judgement, has to bear in mind two things –

(i) the Court considers –

(a) whether the plaintiff has any real prospect of succeeding on the claim or issue; or

(b) whether the defendant has any real prospect of successfully defending the claim or issue; and

(ii) there is no other reason why the case or issue should be allowed to go to trial.

22) The Apex Court has also interpreted the expression '*real prospect of success*' used in Rule 3 of Order XIII-A by holding in paragraph 51 of the judgment as under:

⁵ 2026 SCC Online SC 744

51. This brings us to the expression 'real prospect of success', as used in Rule 3 of Order XIII-A of the CPC. This phrase is, by its very nature, self-explanatory and admits of no further interpretation. It postulates that the likelihood of success must be real and substantial, as opposed to being merely fanciful or speculative. In other words, the standard envisages a degree of certainty higher than that of a claim which is merely arguable. Accordingly, where the Court finds that a claim or defence is so weak that it *prima-facie* discloses no reasonable prospect of success, it is neither necessary nor desirable to subject the parties to the rigours of a full-fledged trial. The provision, thus, empowers the Court to arrest such proceedings at the threshold, thereby preventing undue expenditure use of judicial time and resources. At the same time, the provision reflects the broader obligation of the Court to ensure expeditious delivery of justice. In this regard, reference can be made to the decision of the England and Wales Court of Appeal in *Swain v. Hillman*, [2001] 1 All ER 91, which set the standard for summary judgment under Part 24 of the Civil Procedure Rules, 1998 of the United Kingdom. In this case, it was held that the power of summary judgment is to be exercised where it is just and expedient to do so, enabling parties to know their legal position without being compelled to endure a trial

23) Thus, the likelihood of success for a Defendant must be real and substantial as opposed to being mere fanciful or speculative. The standard required under Rule 3 of Order XIII-A envisages a degree of certainty higher than that of a claim which is merely arguable. Once the Court finds that the defence is so weak that it *prima facie* discloses no reasonable prospect of success, the parties may be relieved of the rigours of a full-fledged trial.

24) Keeping in mind the broad scope of inquiry under Order XIII-A of the Code, I now proceed to decide whether Plaintiff is entitled to summary judgment in terms of prayer clause (d-2) of the Plaint.

25) As observed above, prayer clause (d-2) of the Plaint is restricted solely to the aspect of recovery of interest. The Suit contains other prayers seeking compensation of Rs. 24,71,34,750/- for the delay in handing over possession of the Units and compensation of Rs. 11,45,000/- per month for failure to hand over the car parking spaces, etc. At this stage, summary judgment is not sought in respect of the claim for compensation, which would require the Plaintiff to lead evidence, to establish the loss suffered and Plaintiff's entitlement to recover such compensation. It is well settled position that interest is not a penalty or punishment, but it is normal accretion on capital. The Apex Court in **Alok Shanker Pandey** has held in paragraphs 5 to 9 of the judgment as under:

5. It is not disputed that the installments as mentioned in both the reservation letters, were paid on the specified dates as indicated therein. It is also not disputed that though the estimated cost was indicated at Rs.6,64,000/-, the same was not worked out till the year 1998 when the first camp was held, in respect of allotment of such flats. The respondent also made no efforts to issue demand letters in respect of the remaining amount subsequent to the year 1995 when the last installment was paid. On the other hand, the applicant was given an assurance that the possession of the flat would be given to him in the near future. The applicant, therefore, had no alternative but to ask for refund of the amount as deposited. The respondent on its side has no explanation for either not demanding the remaining amount or handing over the possession of the flat. Even the averments of the applicant that the house is not yet ready has not been strongly refuted. Thus it is a clear case of deficiency of services on the part of the respondent. As a result of such unfair trade practices, the applicant has not only been deprived of return on his investment made with the respondent authority but also the possession of the flat promised to him.

6. Considering the above facts, the Commission directed the respondent to pay 12% per annum interest on the installments from the dates of the payment till the date of refund. This appeal has been filed claiming interest at a higher rate.

7. Learned counsel for the appellant Shri Parag P. Tripathi referred to various decisions in which this Court has granted higher rate of interest e.g. Renusagar Power Co. Ltd. Vs. General Electric Co. 1994 Supp.(1) SCC 644.

8. We are of the opinion that there is no hard and fast rule about how much interest should be granted and it all depends on the facts and circumstances of the each case. We are of the opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount the respondent should then in addition to the interest at the rate of 12% per annum also pay to appellant interest at the same rate on the aforesaid interest from the date of payment of installments by the appellant to the respondent till the date of refund on this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.

9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.

26) So far as liability to pay interest by a promoter for delay in delivery of the flats/units is concerned, Section 18 of RERA provides for statutory obligation to pay interest to the allottee in respect of delayed period. In ***Newtech Promoters & Developers*** the Apex Court has held that an allottee who does not withdraw from the project, has an unqualified right to seek refund which right is not dependent on any contingencies or stipulations in the contract. The Apex Court has held in paragraph 24 of the judgment in ***Newtech Promoters & Developers*** as under:

24. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

27) Recently, this Court in ***Sanklecha Constructions Pvt. Ltd.*** (supra) rejected the contention advanced on behalf of the promoter therein that the observations made in para 24 of the judgment in ***Newtech Promoters & Developers*** are mere obiter dicta. The Court held that the observations made by the Hon'ble Supreme Court in para 24 of the judgment constitute the *ratio decidendi* and cannot be treated as mere obiter dicta. This Court observed in paragraph 37(i) and (ii) of the judgment as under:

37. Thus, in view of the above discussion, the questions of law are answered as under:

i) The obligation of a promoter to return to the allottee the amount received by him with interest on demand made by the allottee under Section 18(1) of RERA is absolute and unqualified. The Regulatory Authority and/or the Appellate Tribunal does not have discretion to take into consideration any mitigating circumstances or genuine efforts made by the promoter in completing the project in time for the purpose of granting any relaxation, either in respect of the period during which interest is payable, or in the rate of interest or the date on which refund is to be made.

ii) The observations made by the Hon'ble Apex Court in paragraph 24 of the judgment in *Newtech Promoters (supra)* are not obiter dicta and they constitute ratio decidendi. Findings recorded by the Division Bench of this Court in paragraph 137 of the judgment in *Neelkamal Realtors (supra)* cannot be read to mean as if any discretion exists with the Regulatory Authority or with the Appellate Tribunal in granting any relaxation to the promoter, who makes genuine efforts in completing the project in time in the matter of either period during which interest is payable or in the rate of interest or the date on which refund is to be made.

28) However, in the present case, Defendant No.1 has apparently not registered the Project, which did not have Completion Certificate at the time of coming into effect of RERA. If the Project was registered under RERA, Defendant No.1 would have been statutorily liable under Section 18 of RERA to pay interest. In *Mohammed Zain Khan (supra)*, this Court has held that if the Project is capable of or liable to be registered, the actual registration of the Project is not a pre-condition for maintaining the complaint under Section 31 of RERA. This Court held that even in respect of unregistered projects, complaint under Section 31 of RERA would still be maintainable. It is held in paragraphs 25 and 30 of the judgment as under:

25. Thus, failure to register a project amounts to violation or contravention of provisions of the RERA, which act can be punished under Section 59. Therefore, in strict sense, registration of a project is not a precondition for maintaining a complaint under section 31 of the RERA. If section 31 of the RERA is read to mean that complaints only in respect of registered projects can be entertained by Regulatory Authority or Adjudicating Officer, this would mean that no action can be taken by Regulatory Authority against a person who contravenes section 3 of the RERA. In fact, contravention of section 3 necessarily takes place in respect of unregistered project. I am therefore of the view that even in respect of unregistered projects, complaint under section 31 of the RERA would be maintainable.

30. Mr. Gala is at pains to point out that the purchase transaction in the in the present case was effected in the year 2012 i.e. before coming into effect of RERA. He would submit that Appellant could not have foreseen regulation of real estate projects by enactment of RERA or exclusion of projects for which no development permissions are issued from ambit of RERA. While I can only sympathize with Appellant for the position, in which he finds himself, provisions of RERA cannot be selectively interpreted to suit individual grievance of Appellant. Though RERA takes within its fold even ongoing projects under first Proviso to section 3 of the RERA, again such ongoing real estate project must be the one which is capable of or liable to be registered. The Appellant has taken the risk of entering into purchase transaction in respect of land, which was yet to be converted to non- agricultural use. Perusal of the allotment letter issued in the name of Appellant and his mother would indicate that NA permission was to be obtained before April 2013. Appellant and his mother have thus chosen to enter into transaction with Respondent No.1 with their eyes open to the fact that they were agreeing to purchase agricultural land, which was to be converted into non-agricultural use. Since RERA would not apply to Valvan Valley project, Appellant would not be in a position to maintain a complaint under section 31 of the RERA for seeking enforcement of any rights under sections 12, 18 and 59 of the RERA. It appears that Appellant has already filed complaint before the State Consumers Dispute Redressal Commission, and he would be at liberty to pursue the same.

29) Thus, the spirit of provisions of Section 18 of RERA can be made applicable to the present case only for the purpose of fastening the liability to pay interest on Defendant No.1-Promoter for delaying handing over of possession of the units. The liability to pay interest on delayed possession is a concept different and distinct from the concept of making a promoter liable to compensate the allottee for delaying possession. The prayer for payment of compensation may require evidentiary adjudication but payment of interest on paid consideration during delay period is something which does not require conduct of trial by leading oral evidence. This concept is dealt in paragraphs 29 and 30 of

the judgment of this Court in ***Sanklecha Constructions Pvt. Ltd.*** which reads thus:

29. Section 18 of RERA talks of two amounts viz. (i) amount received by the promoter from the allottee, and (ii) compensation to be recovered by the allottee from the promoter. A plain reading of Section 18(1) and 18(2) of RERA would indicate that return of amount and interest thereon is the bare minimum which the allottee must receive from the Promoter. If the allottee is in a position to prove cause of loss and entitlement to receive compensation, the same can be pressed before the Adjudicating Authority under Section 18(2) of RERA. Thus, while payment of compensation amount may await adjudication, return of amount received by the Promoter and interest thereon must be paid immediately on raising of a demand. Section 18(1) of RERA thus does not leave any discretion for the Promoter or to the Regulatory Authority or to the Appellate Tribunal to delay return of the paid amount or to direct that the refund can be made only after obtaining OC for the project.

30. Thus, on plain reading of Section 18 of RERA, in my view, the right to seek return of amount with interest is absolute and unqualified. The right cannot be diluted by the Regulatory Authority or by the Appellate Authority or even by the High Court by giving any concession to the promoter to return the amount only after securing OC for the project.

30) Thus the liability to pay interest by the promoter to the allottee is absolute and unqualified and does not depend on genuineness of efforts made by the promoter in completing the project in time. The mitigating circumstances, if any, in favour of the promoter are relevant for deciding the issue awarding compensation, which is distinct and different from awarding interest.

31) Defendant's defence of absence of locus for the Plaintiff to maintain the suit appears to be *prima-facie* baseless. True it is that the Agreement for Sale is executed by Defendant No.1 in favour of Defendant

Nos. 3 and 4. However, there appears to be reconstruction within the family. Defendant Nos.3 and 4 paid full amount of consideration to Defendant No.1 for purchase of the units. After execution of the Agreement for Sale dated 2 February 2008, there is registered Deed of Partition executed between Defendant Nos.3 and 4 under which they have given the units to their mother-Mrs. Jamna P. Lalwani. Therefore, a registered Deed of Discretionary Trust dated 24 March 2014 is executed under which the owners have irrevocably transferred the Units to the Trust. The beneficiaries of the Trust are members of Lalwani Family which includes even Defendant Nos.3 and 4.

32) It must also be borne in mind that, had Defendant No. 1 has to fulfill its contractual obligations by handing over possession of the Units within the agreed timeline. The internal family arrangement of the purchasers would not deprive them of the rights arising out of Agreement for Sale. The construction of the building has been delayed by almost 12 long years. Defendant No.1 cannot be permitted to escape the liability to pay interest just because the family was reconstructed during this time gap of 12 years.

33) In any case, Defendant No.1 has handed over possession of the units to the Plaintiff. The handing over of the possession is after filing of the present suit and by making a specific statement before this Court on 10 February 2020. The order dated 10 February 2020 passed by this Court in the present Suit reads thus:

1. On behalf of defendant no.1, the learned counsel states that they are willing to handover possession of the suit premises being unit no.503 and 504 on or before 15th February, 2020.

2. List on 17th February, 2020 for compliance.

34) The possession letter dated 13 March 2020 is addressed to the Plaintiff and the same contains a pre-typed space for acknowledgment of possession by authorised signatory/allottee which was described as '*Lalwani Family Trust*'. Even the additional Written Statement filed by Defendant No.1 pleads that possession of the unit is handed over to the 'Plaintiff' and it is admitted position that Plaintiff is a trustee of Defendant Nos. 2 to 4 (*beneficiaries*). Having given above admissions and considering the conduct of Defendant No.1 at the time of handing over possession of the units, it is clear that there is no real prospect for Defendant No.1 to succeed in the defence of absence of locus for the Plaintiff to maintain the suit. Even otherwise, if provisions of RERA are considered, under Section 2(d) thereof, the term '*allottee*' includes a person who subsequently acquires the said allotment through sale, transfer or otherwise. In my view therefore the defence raised by Defendant No.1 has no real prospect within the meaning of Rule 3 of Order XIII-A.

35) The second defence of Defendant No.1 is about alleged occurrence of *force majeure* events causing delay in construction of the building. Here again, I do not find any real prospect of Defendant successfully defending the claim for interest by raising the pretext of *force majeure* events. The plea is premised on alleged rejection of

proposal by MCGM on several occasions, changes in plans and FSI potential and lastly introduction of provisions of RERA. It is evident that the plea regarding the rejection of the proposal by the MCGM on several occasions is vague and lacks material particulars. There is not even a single document annexed to the Written Statement or additional Written Statement to indicate any such rejection of the plans. In any case, it is the duty of the promoter to get the plans sanctioned and to construct the building accordingly. If the promoter submits faulty plans and invites rejection, the allottee cannot be made to suffer. Thus, rejection of plan by the Planning Authority does not constitute a *force majeure* event. In any case, it cannot be contended by any stretch of imagination that it can take 12 years in getting the plans sanctioned from the Planning Authority. As held by this Court in ***Sanklecha Constructions Pvt. Ltd.***, the mitigating factors may be relevant for deciding the claim for compensation, which has no bearing on Promoter's application to pay interest on the paid consideration. In my view, therefore, the defence raised by Defendant No. 1 about *force majeure* events is devoid of merit, and Defendant No. 1 has no real prospect of successfully defending the claim for interest on that ground.

36) So far as second requirement of Rule 3 of Order XIII-A is concerned, I am of the firm view that there is no other compelling reason why the claim for interest should not be disposed of before recording of evidence. To establish liability of Defendant No.1 to pay interest on paid consideration, oral evidence is not required to be led. In my view

therefore, both the conditions stipulated in Rule 3 of Order XIII-A are clearly established in the present case.

37) The contention raised on behalf of Defendant No.1 that Partition Deed makes a false statement about the Units being in possession of the allottees is irrelevant to the issue involved in the Application. Plaintiff's entitlement to summary judgment cannot be decided on the basis of what is stated in the Partition Deed.

38) The contention of Defendant No.1 that benefit of Section 18 of RERA is restricted only to allottees is baseless in view of the fact that even successor in title of an allottee is treated as an 'allottee' under the provisions of RERA.

39) Mr. Jain's reliance on Section 79 of the RERA is misplaced as Defendant No.1 has not registered the project under RERA and therefore it cannot raise an objection to the jurisdiction of Civil Court. If the project was to be registered under RERA, Plaintiff would have a swifter remedy of seeking reliefs from the MahaRERA.

40) Once it is held that summary judgment can be made qua prayer clause (d-2) of the plaint, the issue for consideration is about the rate of interest that can be granted. Plaintiff has sought interest @ 12% p.a. However, there is no basis for claiming interest @ 12% p.a. Parties have contractually agreed under Clause 8 for simple interest @ 9% p.a. The spirit of the provisions of Section 18 of RERA has been relied upon

for fastening liability on Defendant No. 1 to pay interest. In my view, the rate of interest prescribed under the Maharashtra RERA Rules, 2017, which ranged from 10.10% to 10.75% during the period from May 2017 to February 2020, cannot be applied to the present case. In the circumstances, I consider it appropriate to award contractually agreed simple interest of 9% per annum.

41) In view of the above discussion, the present application can be made absolute by granting summary judgment in favour of the Plaintiff only in terms of prayer clause (d-2) of the plaint subject to a caveat that the rate of interest on the amount of Rs.5,51,00,000/- shall be @ 9% p.a. for the period during 31 March 2008 to 15 February 2020.

42) I accordingly proceed to pass the following order :

- i.** There shall be summary judgment in favour of the Plaintiff and against Defendant No.1 in terms of prayer clause (d-2) of the plaint with modified rate of interest.
- ii.** Defendant No.1 shall accordingly pay to the Plaintiff simple interest @ 9% p.a. on the amount of Rs.5,51,00,000/- for the period from 31 March 2008 to 15 February 2020.
- iii.** Decree be drawn up accordingly.

43) With the above directions, the Interim Application is **partly allowed** and disposed of. Costs in the Application shall be costs in the Suit.

NEETA
SHAILESH
SAWANT

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NEETA SHAILESH
SAWANT
Date: 2026.10.23
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[SANDEEP V. MARNE , J.]